BEFORE THE

Interstate Commerce Commission

WASHINGTON, D.C. 20423

In the Matter of	)	
	)	CC Docket No. 93-36
Tariff Filing Requirements for	)	
Non-Dominant Common Carriers	)	

COMMENTS OF MOBILE MARINE RADIO, INC.

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Mobile Marine Radio, Inc. (hereinafter sometimes referred to as "MMR"), by its attorney, herewith respectfully submits its comments responsive to the Notice of Proposed Rulemaking proposing to allow non-dominant common carriers to file tariffs (i) upon no more than one (1) day notice, and (ii) setting forth rates in terms of maximums or ranges rather than in absolute numbers.1/

I. STATEMENT OF INTEREST

Mobile Marine Radio, Inc., is a maritime common carrier rendering both domestic and international telecommunications service which constitutes the essential link between domestic and foreign land-based subscribers and ships at sea. MMR renders both voice and record services. MMR is substantially affected by the Commission's regulations as they pertain both to competing

II. COMMENTS

A. Requirements for International Telecommunications Service

Accounting for international maritime telecommunications service is governed by the CCITT Regulations. CCITT establishes a specific scheme which governs charging for maritime service, as follows:

> The charges for radiocommunications consist of:
>
> (a) the landline charges;
>
> (b) the land station charges;
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> (c) any charges for special services for telegrams that have to be considered in the accounting; and
>
> (d) any special charges for special facilities.

CCITT Regulations at K1-K5. Furthermore, the landline charge identified in "(a)" above must be "notified either in special drawing rights (SDRs) or in gold francs to the ITU General Secretariat by the land station Administration," id. at K6; and "The landline and land station charges notified to the ITU General Secretariat in accordance with K6 to K8 will be published in the List of Coast Stations." Id. at K9. Finally, as pertinent to this rulemaking, the CCITT Regulations provide that new or modified charges shall not be applicable to traffic (other than for countries which establish the new or modified charges) until a period of one month and 15 days following the publication date of the ITU Operational Bulletin which contains the notification of the new or modified charge. Id. at K12-K14.

2/(...continued)
12, except as the latter may relate to tying arrangements between MTS and/or telex landline service and maritime service rendered by the same carrier or carriers under common control, as discussed in II.C., infra.

The United States being a party to the CCITT Regulations, maritime carriers are subject to those regulations. See, 47 C.F.R. § 80.86. Accordingly, the Commission must regulate tariff practices of carriers consistent with the CCITT provisions governing the charging for international telecommunications services.

Sections 201 and 222 of the Communications Act of 1934, as amended, require the interconnection of carriers for the joint provision of through service and the establishment of charges, practices, classifications and regulations for such service which are just and reasonable. Thus, the CCITT Regulations have application not only to entities such as MMR which furnish the "land station" service referenced in the CCITT regulations, but also to carriers providing the essential landline links connecting between maritime carriers on the one hand with both domestic subscribers for the origination and termination of international maritime traffic, and also foreign originated traffic destined for vessels at sea. Accordingly, it is in this context that the Commission must consider the instant proposal and its effect upon maritime common carriers and their compliance with the CCITT Regulations.

B. One Day Notice

The Commission proposes to allow non-dominant carriers to file tariff changes on a minimum of one-day notice. This would be a reduction from the current 14-day notice. MMR has no objection to the filing of *reduced* tariff charges on one-day notice; however, reduction of the notice period for tariff

increases from 14 days to one day exacerbates an already serious problem affecting MMR.

The Commission's regulations governing the filing of tariffs provide that the notice period commences upon filing with the Commission. MMR may not receive notice of a tariff change by a connecting carrier for several days or even up to a week following the filing with the Commission. If the change entails an increase in charges for connecting service, e.g., by TRT or another connecting carrier which has been classified "non-dominant" by the Commission, MMR then must initiate the process of notification the ITU General Secretariat. The ITU Operational Bulletin is published on a monthly cycle; and accordingly, taking into account the one-month plus 15-day notice period provided by K12-14 of the CCITT Regulations, MMR may experience a lag time of approximately two months before it can recoup increased connecting carrier charges. For the Commission to reduce the notice period applicable to rate increases from 14 days to one day would simply compound the current squeeze to which MMR is subject.

The Commission cites, as supporting authority for its proposed 1-day period, the precedent set by the Interstate Commerce Commission for motor carrier tariff filings, as sustained on appeal in Southern Motor Carriers Rate Conference v. United States, 773 F.2d 1561 (11th Cir. 1985). As the Commission notes in paragraph 17 of the NPRM, however, the 1-day notice period adopted by the Interstate Commerce Act is applicable to rate *decreases*. Rate reductions on such short notice do not adversely impact connecting carriers or customers; and MMR has no

objection to a 1-day notice period for rate decreases, as adopted by the Interstate Commerce Commission in the precedent cited as supporting this proposal. Moreover, the 1-day notice period for rate decreases is consistent with the Commission's objective of promoting competition. While carriers should not unduly be constrained with regard to necessary rate increases, carriers do

proposes to vitiate the tariff concept by gutting the requirement that carriers shall "print and keep open for public inspection schedules showing all charges ...," 47 U.S.C. § 203(a).

A "charge," as pertinent to its use in the Communications Act, is defined as "the price demanded for something."[4/] Publication of a maximum charge or a range of rates neither meets this definitional concept nor comports with the structure of common carrier service under Title II of the Act. To allow publication of charges in non-specific amounts, whether by range or by maximum, defeats the tariffing concept of notice, opportunity for review, and the non-discrimination injunction of the Act. Accord, Regular Common Carrier Conference v. United States, 793 F.2d 376 (D.C. Cir. 1986). In this latter regard, while relaxing tariff regulation of carriers deemed to be non-dominant, the Commission maintained the applicability of the non-discrimination provision of the Act. Competitive Common Carrier, 91 F.C.C.2d 59, 70-71 (1982). Allowing tariffs to be published with non-binding statements of rates would frustrate whatever residual regulatory authority the Commission sought to preserve to enforce Section 202 of the Act.

The Commission cites to precedent under the Interstate Commerce Act in support of its reduced notice proposal, and the courts have cited to the interpretation of Interstate Commerce Act as instinctive in interpreting the common carrier provisions of the Communications Act. See, AT&T v. FCC, supra, at 736, n.12. The Commission in this aspect of the NPRM as well should

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4/ Webster's Ninth New Collegiate Dictionary, Merriam-Webster, Inc. (Springfield, MA), 1986.

look to the treatment of range of rate tariffs by the Interstate Commerce Commission, for that agency also has endeavored to promote carrier competition through relaxation of tariffing requirements.5/ While the Interstate Commerce Commission has ruled in individual cases that range of rate tariffs did not satisfy the disclosure requirements of the Interstate Commerce Act,6/ the ICC declined to declare range of rate tariffs per se

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5/ The ICC's lack of enforcement of tariff regulation, and the bankruptcies produced by the combined effects of the economic recession in the early 1980s and the inability of numerous motor carries to survive in a competitive environment, have resulted in massive litigation, with a potential liability estimated by the ICC to be in excess of $30 billion, entailing suits by trustees for bankrupt motor carriers seeking recoveries based upon the underpayment of tariffed charges. Indeed, the same regulatory ingredients that form the basis for the motor carrier undercharge problem are present in the Communications Act: a statutory requirement to collect and pay the tariffed rate and a legal right to recover lawful charges. Compare, 49 U.S.C. §§ 10761(a) and 11706(a) with 47 U.S.C. §§ 203(c) and 415(a).

6/ See e.g., Special Tariff Authority No. 84-500, Negotiated Discounts - ANR Freight Systems, Inc. (not printed), served May 22, 1985 (disallowing tariff which provided discounts ranging from 13 to 38 percent, the actual discount to be negotiated on a shipment-by-shipment basis depending on "the reasonable value and characteristics of the property"); Special Tariff Authority No. 85-2375, Haddad Transportation (not printed), served Oct. 31, 1985 (disallowing tariff providing for discounts of up to 10 percent off the base rate, based on "value of service" to the shipper and "value of traffic" to the carrier, with the actual discount specified by code on the bill of lading); No. MC-C-10971, Roadway Express, Inc. v. Pilot Freight Carriers, Inc. (not printed), served December 8, 1986 (disallowing tariff with rates negotiable within a set range for each level of traffic imbalance determined to exist by the carrier); No. MC-C-10975, Roadway Express, Inc. v. Consolidated Freightways Corp. of Delaware (not printed), served July 14, 1987 (same).

unlawful.[7] The Commission, under Congressional direction, now is reconsidering its prior declination to adopt a per se ruling on the unlawfulness of range of rate tariffs.[8] The condemnation of this practice was expressed by the Senate Committee on Appropriations in no uncertain terms:

> The Committee remains concerned about the ICC's failure to adequately enforce motor carrier tariff filing standards required by law. ... Despite the ICC's case-by-case approach to addressing the lawfulness of tariff forms, the number of unlawful filings remains substantial.
>
> In order to ensure the rate disclosure required by law, the Committee instructs the ICC to initiate, as soon as possible, an industrywide proceeding to eliminate motor tariff filings that fail to explicitly state actual rates applied by carriers or that use so-called range or right in provisions ... The Committee expects the ICC to complete this proceeding within 180 days and to report its progress in doing so to the Committee.

S. Rpt. 102-351 at 187-188 (July 30, 1992).

MMR's concern with non-specific tariff rates arises separately from its CCITT notification responsibilities and by virtue that competing carriers render not only maritime service but also connecting landline service.[9] MMR is subject to what it believes is not only unfair but also unlawful competition wherein MCI extends volume-related non-tariffed

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7/ Petition for Declaratory Order -- Discounts and Customer Account Codes, 8 I.C.C.2d 47 (1991).

8/ Docket No. 40887, Range Tariffs of All Motor Common Carriers -- Show Cause Proceeding, 58 Fed. Reg. 3559 (Jan. 11, 1993).

9/ MCI renders both maritime telegraphy as well as landline telegraphy and telephony services; and AT&T renders maritime telephony service, and also holds authority for maritime telegraphy service, as well as rendering landline network services. While AT&T is regulated as dominant, the regulatory treatment of AT&T currently is under re-

discounts to customers, which discounts may be earned by landline network usage but applied to both landline and maritime charges. Thus, MCI is able to leverage its landline network to MMR's severe competitive disadvantage. MMR, not being the operator of a landline network, but reliant upon those operated by MCI and other carriers, cannot offer customers the same rate advantages that MCI does through its tying arrangements.[10/] The Court of Appeals' decision in AT&T v. FCC, supra, hopefully will terminate MCI's off-tariff discounting practices. To allow an entity such as MCI to tariff in non-specific rate form would allow it to continue tying arrangements between services through the manipulation of the rates charged.

The Commission has taken notice of the anticompetitive effect of allowing carriers to tie services together in its pending maritime rulemaking proceeding, PR Docket No. 92-257.[11/] Therein, the Commission proposes to subject maritime carriers to

to-point capabilities on a separated basis to prevent cross-subsidization and unlawful tying.[12/] The result MMR requests herein is fully consistent with the Commission's policies and recent actions regarding the regulatory status of carriers